IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6775 OF 2004

Tayappa Vithoba Dubhale .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents.

Mr.G.S.Godbole and Mr.Nitin Mulye for petitioner

Mr.Y.D.Mulani, A.G.P. for State.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

**DATE : 14TH OCTOBER 2004.**

P.C.

. Rule. Respondents waive service. By consent Rule made returnable forthwith.

2. Petitioner challenges an order dated 12th July 2004 passed by the Minister, Food and Civil Supplies, State of Maharashtra onfirming order

passed by the District Supply Officer, Solapur and Dy.Commissioner (Supplies) Pune Division cancelling the licence and forfeiting the security deposit of petitioner.

3. It is the case of petitioner that in 1992, he was granted licence for running ration shop. Petitioner has been running the said ration shop. He contends that on 28th February 2001 an order was passed by S.D.O. Solapur cancelling the licence of petitioner for alleged irregularities. The security deposit of petitioner was forfeited. This order was set aside partly by Dy.Commissioner (Supplies) Pune Division in revision application filed by petitioner. An order to this effect was passed by him on 17th September 2001. He remanded the matter to the competent authority.

4. Upon remand, District Supply Officer passed fresh order on 15th February 2002 directing petitioner to pay fine of Rs.2000/-.

5. On 11th February 2002, petitioner addressed letter to Tahsildar Solapur requesting

him to transfer ration cards from his shop to another ration shop, being shop No.2 managed and administered by Dr.Babasaheb Ambedkar Seva Sangh. Petitioner made this request on account of his ill-health and as the Doctor advised him to get himself admitted in a hospital for treatment. Petitioner applied for shifting the ration cards for a period of three months on account of aforesaid reason.

6. Once again there was a complaint that card holders did not get supplies regularly. A notice was given to petitioner which was replied by him on 28th April 2003 pointing out that on account of his ill health and at his request, ration cards were shifted to some other shop. Therefore, there is no question of petitioner having committed any irregularities. On the other hand, he pointed out that after the period of three months came to an end, he requested for re-transfer of cards in question to his shop and instead of acting upon the same, a show cause notice has been clamped alleging irregularities.

7. It appears that District Supply Officer

was not satisfied with this explanation and by an order dated 23rd May 2003, held that the terms and conditions of licence have been breached and for that purpose petitioner should pay a fine of Rs.1000/-. Petitioner deposited the said amount.

8. A complaint being RCNA 873 of 2003 was filed in the Court of Chief Judicial Magistrate, First Class Solapur on 29th October 2003 against petitioner. This was a private complaint under section 409, 420, 468 and 471 of IPC. It appears that learned Magistrate directed the concerned police station to make investigation and report.

9. By letter dated 10th November 2003, petitioner pointed out that one A.M.Bandkar another ration shop owner using his political influence has filed the said false complaint. He was also responsible for taking away quota of food grains allotted to the petitioner. However, ignoring the pleas of petitioner, the District Supply Officer, Solapur, held that petitioner's licence was liable to be cancelled and security deposit be forfeited. An order to that effect was passed on 12th November 2003.

11. Petitioner carried the matter in revision to the Dy.Commissioner, Pune Division. However, the revision application was dismissed by the Dy.Commissioner on 30th December 2003. Being aggrieved by the order passed by District Supply Officer, Solapur and Dy.Commissioner, Pune Division, petitioner preferred a revision application before the Minister for Food, Civil Supplies and Consumer Protection, Government of Maharashtra. The Minister has also dismissed the revision application and that is how petitioner is before us.

12. Shri Godbole, learned Counsel appearing for petitioner submits that ground on which the licence has been cancelled is imposition of fine of Rs.1000/- as well as criminal complaint pending against the petitioner. He submits that the District Supply Officer passed the order without giving an opportunity of hearing to the petitioner. Further, the authorities have been influenced to a great extent by the filing of criminal complaint against him. He submits that for alleged irregulaities, the petitioner has

been fined on earlier occasion. At no stage, the authorities found the matter serious enough to cancel authorisation/ licence issued in his favour. On the other hand, the authorities were satisfied with the explanation forwarded and let off the petitioner on payment of fine. He submits that the alleged irregularities are of the same period for which fine has been imposed upon the petitioner. The impugned orders are perverse because the petitioner had applied on his own for transfer of ration cards on account of his ill health. There has been no complaint against him of any nature whatsoever from any card holder. For all these reasons, the impugned order be quashed and set aside.

13. On the other hand, Shri Mulani, A.G.P. was unable to point out anything from the record which would refute the allegations of petitioner.

14. This Court, on 20th September 2004 heard both sides and passed an order after perusing the record. The order notes that there is no allegation against the petitioner, save and except filing of a criminal complaint. This

criminal case has been filed by another ration shop owner whose shop is adjacent to the shop of petitioner. We had directed the respondents to point out anything which empowers them to cancel a licence on the basis of a private complaint. Learned A.G.P. applied for an adjournment to take instructions and to file an affidavit. The matter was adjourned at his request but no affidavit in reply has been filed.

14. After perusing the impugned orders and more so that of the Revisional Authority we are satisfied that the authorities could not have cancelled the licence by relying upon the same irregularities which have been made subject matter of earlier adjudication. On the earlier occasion, petitioner was directed to pay fine and the matter was closed. All that has happened after the orders in May 2003 is filing of criminal complaint referred to above. The Revisional authorities have observed in the impugned orders that durin the course of investigation, serious discrepancies have been noticed and repeated complaints have been made against petitioner for not lifting the

commodities for three months. However, the same instances which have been subject matter of the earlier adjudication have been repeated. The revisional authorities have observed that the petitioner indulged in black marketing. However, we find from a perusal of the record that such allegation does not appear in the show cause notice. It is clear to us that petitioner's licence has been cancelled merely because a criminal complaint was filed by an adjacent shop owner. All other aspects have been concluded in the earlier adjudication. Further, the observation about black marketing is not supported by any material.

15. In the result, the impugned orders are wholly unsustainable.

16. The writ petition succeeds. Rule is made absolute in terms of prayer clause (a) with no orders as to costs. However, it is clarified that this order will not prevent the respondents from initiating such steps as are permissible in law for breach of the terms and conditions of licence.

*****